IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5525 OF 1998

Balkrishna Gopal Murkar,
At Gadade Patil Niwas,
Tirandas Village, Opp. IIT Main Gate,
Pawai, Mumbai - 400 076. ... Petitioner

V/s

Smt. Sunita Ankush Gadade,
AT Patil Niwas, Tiramdas Village,
Opp. IIT Main Gate,
Pawai, Mumbai - 400 076. ... Respondent

Mr. B.K. Raje for the petitioner.

CORAM: P.V. KAKADE, J.

DATED: 22ND MARCH, 2006

ORAL JUDGMENT:

1. Heard advocate for the petitioner. None present for the respondent.

2. The petition is aimed against the order of the lower appellate Court dated 17.9.1998 rejecting the application of the petitioner under Order 41 Rule 27 of the C.P.C. seeking permission to produce the documentary evidence and consequently seeking amendment of the pleadings at the appellate stage.

3. The respondent filed the suit against the present petitioner for his eviction from the suit premises on the ground of bonafide requirement of the suit premises which came to be decreed. The petitioner filed the appeal challenging the impugned order passed by the Trial Court on 5.2.1997 whereby suit came to be decreed under Sec. 13(1)(g) of the Bombay Rent Act.

4. In the course of the appeal, the petitioner filed an application under Order 41 Rule 27 submitting that it was necessary to produce in all seven documents in order to rebutt the case of the respondent so as to show that the property was slum area. The lower appellate Court Judge was of the view that no case was made out for seeking production of additional evidence and consequent amendment of the pleadings and dismissed the application. Hence the petition.

5. At the outset, it may be noted that, in fact the petitioner had summoned the witness from the Collector’s office for giving evidence on his behalf, however, at that time, the petitioner did not summon the documents to be produced from the said office. It is not the case of the petitioner that those documents were not

available at the relevant time in the course of the trial. There is no explanation whatsoever from the record in order to show that there was sufficient cause which prevented the petitioner from filing the said documents for consequent amendment. On this aspect, the lower appellate Court has come to the conclusion that the said application was nothing but an attempt to fill the lacuna which had remained in the petitioner's defence and such lacuna cannot be allowed to be filled in by such an amendment in the course of pending of the appeal.

6. I do not see any fault in the reasoning adopted by the lower appellate Court especially when no circumstance is revealed from the record to substantiate the submissions made on behalf of the petitioner that documents were not available for production in the course of the trial. Be that as it may, the fact remains that the petition cannot be allowed which is pending the adjudication since the year 1998.

7. Hence, the petition stands dismissed with no order as to costs.

8. The interim order, if any, stands vacated.

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